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Supreme Court, U.S.
FILED

No. 09-68 JUL 15 2009

OFFICE OF THE CLERK

In The

Supreme Court of the United States

DERRICK ODOMES,

Petitioner,

vs.

STATE OF LOUISIANA,

Respondent.

On Petition For Writ Of Certiorari To The Louisiana Court Of Appeal, First Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether or not the lower courts erred by denying the defendant's motion to quash the indictment for lack of subject matter jurisdiction which violated Art. I subsec. 10 of the U.S. Constitution and LA Const. Art. I subsec. 23 ex post facto application of the criminal law by the State, and violated his right to Equal Protection under the 14th Amendment to the U.S. Constitution.

PARTIES TO THE PROCEEDINGS

DERRICK ODOMES, Petitioner

STATE OF LOUISIANA, Respondent

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On May 6, 2008, the Louisiana 17th Judicial District Court issued its reasons for judgment, denying Derrick Odomes motion to quash the indictment for lack of subject matter jurisdiction.

On September 19, 2008, the Louisiana First Circuit Court of Appeal denied Derrick Odomes application for supervisory writs.

On April 17, 2009, the Louisiana State Supreme Court denied Derrick Odomes application for supervisory writ, four Justices denying and two Justices for granting.

JURISDICTION

The Louisiana State Supreme Court denied Derrick Odomes application for supervisory writ on April 17, 2009. This petition for a writ of certiorari is filed within the prescribed period of ninety (90) days after the April 17, 2009, final judgment.

The jurisdiction of this Honorable Court is invoked under the provisions of 28 U.S.C. § 1257.

STATUTORY AND REGULATORY PROVISIONS

U.S. Constitution, Fourteenth Amendment; Art. I subsec. 10 of the U.S. Constitution and LA Const. Art. I subsec. 23; LA Ch.C. Art. 303 defines the exclusive jurisdiction over children and minors.

STATEMENT OF THE CASE

On or about August 13, 1992, Reverend Hunter Horgan III was murdered and robbed, on this date Derrick Odomes was 14 years of age. On or about September 17, 2007, the defendant, Derrick Odomes, was arrested on the charge of first degree murder and armed robbery of Rev. Hunter Horgan III. On September 26, 2007, the LaFourche Parish District Attorney's office by Grand Jury indictment, indicted the defendant, Derrick Odomes, on the charges of first degree murder and armed robbery. On October 24, 2007, the defendant was arraigned on said charges in the 17th Judicial District Court. A transfer hearing was never held, nor was a delinquency petition ever filed. On April 23, 2008 the Louisiana 17th Judicial District Court issued its reasons for judgment denying Derrick Odomes motion to quash the indictment for lack of subject matter jurisdiction. On September 19, 2008, the Louisiana First Circuit Court of Appeals denied Derrick Odomes supervisory writ application. On April 17, 2009, the Louisiana State Supreme Court denied Derrick Odomes

supervisory writ application, four Justices in favor of denying and two Justices in favor of granting.

REASONS FOR GRANTING THE WRIT

ARGUMENT

1. Whether or not the Louisiana State Supreme Court erred by affirming the First Circuit Court of Appeals decision affirming the Louisiana 17th Judicial District Court decision denying the Petitioner's motion to quash the indictment for lack of subject matter jurisdiction violating Art. I subsec. 10 of the U.S. Constitution and LA Const. Art. I subsec. 23 prohibiting ex post facto application of the criminal law by the State, and violating his right to Equal Protection under the Fourteenth Amendment of the U.S. Constitution.

> **Fourteenth Amendment to the U.S. Constitution.**
>
> All persons born or naturalized in the United States, and subject to the jurisdiction thereof; are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Louisiana Children Code Article 303.

Exclusive jurisdiction over children and minors; exceptions.

A court exercising juvenile jurisdiction shall have exclusive original jurisdiction over:

(1) Delinquency proceedings pursuant to Title VIII, except when a child either:

(a) Is subject to the jurisdiction of the criminal courts for prosecution and liability as an adult pursuant to Chapter 4 of this Title.

(b) Has been transferred by the juvenile court for criminal prosecution and liability as an adult pursuant to Chapter 11 of Title VIII. . . .

The defendant was challenging the district court's subject matter jurisdiction to conduct a trial to determine the guilt or innocence of an alleged murder which occurred in 1992, when the defendant was 14 years old. LA Ch.C. Art. 857 was amended in 1994 to allow the transfer of a 14 year old juvenile to district court given certain procedural mechanisms occurring. ***State v. Havis*, 874 So.2d 153 (La. 2004)**, uses the law as amended in 1994 and states you can transfer a 14 year old's case to district court even if you don't follow the procedural mechanisms.

***Havis*, supra**, states "Because relator's motion to quash challenged not the subject matter jurisdiction of the district court but the procedural mechanism by which the state invoked the original criminal

jurisdiction of that court under circumstances *in which relator did not suffer actual prejudice*, the court correctly denied the motion and asserted its jurisdiction over the case." In the case at bar, the alleged murder occurred prior to the amendment to LA Ch.C. Art. 857, when there was no mechanism to transfer a 14 year old's case to district court, and we are challenging subject matter jurisdiction and we believe Derrick Odomes suffered actual prejudice. We know that in 1992, Art. 857 did not allow for the transfer of a 14 year old from juvenile court to district court. If the legislature had intended to allow subject matter jurisdiction of a 14 year old, charged with murder, to be transferred to district court, in 1992, they would have expressly stated it. In 1994, the legislature decided to allow subject matter jurisdiction to be transferred because they amended article 857 to state just that.

***State v. Everett*, 816 So.2d 1272 (La. 2002)**, states Art. I subsec. 10 of the U.S. Constitution and LA Const. Art. I subsec. 23 prohibit ex post facto application of the criminal law by the State. The focus of the ex post facto inquiry is whether a new law redefines criminal conduct or increases the penalty by which the crime is punishable. **Supra.**

***State v. Williams*, 800 So.2d 790 (La. 2001)**, states a careful reading of LA Rev. Stat. Ann. subsec. 15:301.1 shows that the statute neither increases punishment for a criminal offense nor alters the terms and conditions of punishment previously established by the Legislature for the commission of a

crime. Rather, the thrust of 15:301.1 is procedural. **Supra.**

It would be a violation of the ex post facto clause of the Louisiana and U.S. Constitution to allow article 857 to apply retroactively. This is a substantive change in the law, which would prejudice the defendant and would subject the defendant to harsher punishment, incarceration beyond 21 years of age and potentially incarceration beyond the age of 31. Therefore the law violates Art. I subsec. 10 of the U.S. Constitution and LA Const. Art. I subsec. 23, and should only be applied prospectively.

If this Court follows the States' interpretation of the law, theoretically, this would allow the State to pick whether they wanted a 13, 12, 11, or 10 year old charged with murder to be prosecuted in juvenile court or district court. If the State wanted to charge the child in district court, they would simply wait to prosecute until he turned 21 years of age.

Although district court did not have subject matter jurisdiction when the child was 13, 12, 11, or 10 years old, now that he is 21, the State would contend the district is now vested with subject matter jurisdiction, even though this subjects the individual to harsher penalty and would violate the individual's Constitutional rights.

Also the District Court is violating the Fourteenth Amendment to the U.S. Constitution. In ***State v. Perique*, 439 So.2d 1060 (La. 1983),** the Court stated "Three classes of juveniles were created: (1)

those 15 years old and over charged with first or second degree murder, manslaughter, or aggravated rape; (2) 16 year olds charged with armed robbery, aggravated burglary, and/or kidnapping; and (3) all others under 17 accused of a crime." ***State v. Perique,* supra.** It goes on to state LA Rev. Stat. Ann. subsec. 13:1570 is a jurisdictional statute and the juvenile court has been given jurisdiction only over those juveniles who do not fall within either of the first two categories. In the case at bar, Derrick Odomes falls in category three because he was 14 years of age when he allegedly committed the murder, and juvenile court has jurisdiction. Therefore to give jurisdiction to district court is a violation of the Fourteenth Amendment to the U.S. Constitution, Derrick Odomes Fourteenth Amendment right to Equal Protection under the law. In the case at bar the district court is creating two classes of 14 year olds accused of murder in 1992, those tried before they reached majority and those tried after they reached majority. These two classes are not given equal protection under the law, the ones tried before they reach majority are tried in juvenile court and are subject to a potentially lesser sentence than the 14 year old tried in district court.

CONCLUSION

It is respectfully submitted that the petitioner prays that this Honorable Court grants the writ of certiorari and that the Louisiana 17th Judicial District Court's ruling is reversed and set aside.

Respectfully submitted,

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APPENDIX A

STATE OF LOUISIANA

COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA
VERSUS
DERRICK ODOMES

NUMBER 2008 KW 1052
SEP 19 2008

In Re: Derrick Odomes, applying for supervisory writs, 17th Judicial District Court, Parish of Lafourche, No. 448361-A.

BEFORE: PETTIGREW, McDONALD AND HUGHES, JJ.

MOTION FOR EXTENSION OF TIME IN WHICH TO FILE WRIT APPLICATION GRANTED; WRIT DENIED.

JTP
JMM

Hughes, J., dissents.

COURT OF APPEAL, FIRST CIRCUIT

/s/ Peggy T. Landry
DEPUTY CLERK OF COURT
FOR THE COURT

APPENDIX B

17TH JUDICIAL DISTRICT COURT
PARISH OF LAFOURCHE
STATE OF LOUISIANA

STATE OF LOUISIANA
VERSUS
DERRICK ODOMES

NUMBER 448361
DIVISION A

Transcript of the ruling on Motion to Quash Grand Jury Indictment proceeding held on the 23rd day of April, 2008, in the above-entitled and numbered cause before presiding Judge, Honorable John E. LeBlanc, at Thibodaux, Louisiana.

APPEARANCES: MR. STEPHEN CAILLOUET
MR. CAMILLE MORVANT, II
Assistant District Attorney
District Attorney
Representing the State
of Louisiana

MR. LYNDEN J. BURTON
Representing the Defendant

DERRICK ODOMES, Defendant

****

[2] THE COURT: Let's make appearances in the matter of *State versus Derrick Odomes.*

MR. BURTON: Lynden Burton on behalf of Derrick Odomes, your Honor.

MR. CAILLOUET: Stephen Caillouet on behalf of the State of Louisiana and Mr. Camille Morvant also on behalf of the State of Louisiana.

THE COURT: The matter is before the Court on a motion to quash indictment of Derrick Odomes in docket number 448361. Indictment of Mr. Odomes being by grand jury on a charge of first degree murder for the death of Hunter Horgan on August 13, 1992.

I was provided with memos both before the first hearing and subsequent to the hearing that we had. I have not received anything recently from you, gentlemen. I expect that the matter is fully submitted to the Court for judgment. Is that a correct statement, Mr. Burton?

MR. BURTON: That is correct, your Honor.

MR. CAILLOUET: Yes, your Honor.

THE COURT: When we were here last we had some discussion about the Supreme Court case of *State versus Havis* cited as 874 So.2d 153. I had pointed out that, and I think there was some agreement that the *Havis* case came up after certain changes were made to the [3] Children's Code and I wanted to make sure that I was fully aware of the status of the law as of 1992 when the incident occurred.

The actual background of this case is that Mr. Holmes was 14 years old at the time that he allegedly committed this act. And the issue is whether the

State properly proceeded in District Court by indictment as an adult when Mr. Holmes was approximately 27 or 28 years old at the time of the indictment.

In reviewing the status of the law and the objection as raised by counsel to the subject matter jurisdiction of the court in your motion to quash as well as some procedural objections that were initially raised with the issue of whether or not the case was properly transferred or procedures were properly used to have the case tried as an adult. I have reviewed Louisiana Constitution 1974, article five, section 16, which provides that District Courts have original jurisdiction of all criminal matters and exclusive original jurisdiction of felony cases. There is other language in there with relation to civil matters. But as far as criminal matters, the District Courts of Louisiana have original jurisdiction and exclusive original jurisdiction of felony cases. Article five, section 18 provides that not withstanding any contrary provision of section 16 of this article, juvenile and family courts shall have jurisdiction as provided by law. That is a common theme through out the statutory structure that I am about to discuss.

In article five, section 19 the Constitution provides that the determination of guilt [4] or innocence of a person who is alleged to have committed a crime before his 17th birthday will be governed by special juvenile procedures. And it set forth the legislator's votes and what not on how things can be done, how juveniles can be treated or persons under 17. Unless

the legislature passed laws which provided that special juvenile procedures did not apply for crimes such as first and second degree murder.

One of the good things about having a library is you find old books in it. I was able to find the acts of 1991, particularly act 235 where in the legislature adopted the precursor to the modern Louisiana Children's Code and, in fact, called it the Louisiana Children's Code.

There was some discussion in *Havis* about modifications to the Children's Code which occurred in 1994, which do not necessarily apply in this case. But in that general provision and in the introductory provisions, article 104 of the Children's Code at the time provides that where procedures are not provided in this Code or otherwise by law, the Court shall proceed in accordance with the Code of Criminal Procedure in a delinquency proceeding and in a criminal trial of an adult.

Later in article 116 of the Children's Code the definitions provide that a child means a person who has not attained the age of 17 years. A felony means an offense that may be punished by death or by imprisonment at hard labor. The Children's Code has been adopted apparently in attempting to comply with the Constitution, did provide for special juvenile procedures relating to children. The courts exercising [5] juvenile jurisdiction shall have exclusive original jurisdiction over delinquency proceedings except as they apply to a child, a child being a person under 17.

Those were the specific enumerated transfer cases for crimes committed as 15 or 16 year olds, which included second degree murder.

The Children's Code also provided in title 8 that delinquency procedures for a child accused of a crime were set up to insure the due process of that child and to insure that the child shall receive care, guidance, and control, preferably in his own home conducive to his welfare and the best interest of the state.

Then in article 803, they repeat where procedures are not provided for in this title or otherwise by the Code, the Court shall proceed in accordance with the Code of Criminal Procedure. The very next article provided the definition of a child, article 804. A person under 21 including emancipated minors who commit delinquent acts before obtaining the age of 17.

So the special delinquency proceedings that were set up by the Children's Code have a structural limitation in their application because they are designed just as stated in the *Havis* case by the Supreme Court. They are designed to take into account the State's interest in addressing children's needs for acts that they commit while children that are addressed while they are children, being under 21.

The legislature did not provide any special jurisdiction or juvenile process or any other law which would limit the original jurisdiction of the [6] District

Court in cases where persons over 21 commit delinquent acts before they are 17.

As in the case of *State versus Havis,* in this case Mr. Odomes is not a child. He is over the age of 21. The special designed juvenile court process and procedure is not applicable. As is the case or was the case in *Havis,* the District Courts of the 17th Judicial District and Thibodaux City Court had concurrent jurisdiction in juvenile proceedings, and District Courts were the courts of original jurisdiction for felonies. And even if there was some type of transfer proceeding necessary, it was nothing more than a formality, which this court could have recognized on its own. The transfer provisions are therefore inapplicable. We have no exclusive juvenile court jurisdiction because there is no special juvenile court in Lafourche Parish. Again, his age excludes him from that special juvenile proceeding.

The Court will overrule or deny the motion to quash the indictment of Mr. Odomes because this court has subject matter jurisdiction over Mr. Odomes. And the matter will remain in District Court.

As discussed with counsel before, the rulings of this court in no way address any issue with regard to proposed or possible penalty because we haven't even gotten into the case as far as it relates to the prosecution of the case and the determination of guilt or innocence. All of the comments of this court strictly relate to the procedural objections raised by motion to

quash, which again, the motion to quash is denied. Thank y'all very much.

MR. BURTON: [7] Note my objection for the record, your Honor.

THE COURT: Yes. Mr. Caillouet, you have a matter?

MR. CAILLOUET: Your Honor, I think we are also scheduled for a pretrial conference today.

THE COURT: I will do that with y'all in my chambers if you wish. I would suggest we do it at the bench. Mr. Morvant, Mr. Caillouet, Mr. Burton, y'all want to come up.

(At this time counsel for the State and counsel for the defendant met with the Court for a bench conference.)

THE COURT: Pursuant to bench conference, we will set the matter for trial by jury October 20, 2008 at 9:00 o'clock AM. We will have a status conference on June 23rd, 2008. Would you prefer 1:30, Mr. Burton, since you are traveling?

MR. BURTON: Whatever the Court's pleasure.

THE COURT: Let's do that. Set it at 1:30. We will have a motion cut off. Defense motions. State, do y'all anticipate filling any motions?

MR. CAILLOUET: Not at this time, your Honor.

THE COURT: I am going to do a general motion cut off for 30 days from today, which would be May 23rd. So file your memorandum and motions by that date, Mr. [8] Burton. State, you will have until June 16th to file responding memorandum. If the State files its motions by May 23rd, and certainly, Mr. Burton, you will have until June 16th to respond to their motions. The motions will be heard, I would like you to put in your motion to set it for hearing June 23rd at 1:30. That gives us sufficient time if we need to have some other scheduling deadlines and other cutoffs, further conferences between then and the trial date. Is that satisfactory, Mr. Burton?

MR. BURTON: Yes, your Honor.

THE COURT: Mr. Caillouet?

MR. CAILLOUET: Yes, your Honor.

THE COURT: Mr. Odomes, your lawyer is going to explain to you what just happened when he gets out of here. You are going to have to go back and see him at the jail. I believe that concludes the matter for this mornings purposes. All other pretrials on the misdemeanors and traffics and what not are reset for June 23rd for pretrial conference.

[9] CERTIFICATE

STATE OF LOUISIANA

PARISH OF LAFOURCHE

I, B. CHERYL HARANG, Certified Court Reporter, in and for the 17th Judicial District Court, Parish of Lafourche, State of Louisiana, do hereby certify that the above and foregoing 8 pages constitutes a true and accurate transcription of the proceedings as taken down by me on the 23rd day of April, 2008, in the matter entitled and numbered: *State of Louisiana versus Derrick Odomes,* #448361.

In Faith Whereof, witness my signature this 6th day of May, 2008.

/s/ B. Cheryl Harang
B. CHERYL HARANG
Certified Court Reporter
State of Louisiana

APPENDIX C

THE SUPREME COURT OF THE STATE OF LOUISIANA

STATE OF LOUISIANA

VS. NO. 2008-KK-2494

DERRICK ODOMES

IN RE: Odomes, Derrick ; – Defendant; Applying For Supervisory and/or Remedial Writs, Parish of Lafourche, 17th Judicial District Court Div. A, No. 448361; to the Court of Appeal, First Circuit, No. 2008 KW 1052;

April 17, 2009

Denied.

GGG

JPV

CDT

JTK

WEIMER, J., recused.

KIMBALL, C.J., would grant.

JOHNSON, J., would grant.

Supreme Court of Louisiana
April 17, 2009

/s/ Rai T. Daigle
Deputy Clerk of Court
For the Court